

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Lawrence Leeds

v.

Civil No. 10-cv-109-JD

BAE Systems

O R D E R

Lawrence Leeds filed a writ in state court, raising claims of wrongful termination and violation of the Family Medical Leave Act. BAE Systems removed the case to federal court and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Leeds filed an objection to the motion to dismiss and on the same day filed a motion to amend his complaint. BAE Systems provided notice of its intent to file a reply to Leeds's objection. The time for BAE Systems to respond to Leeds's motion to amend has not expired.

A party may amend his pleadings, as a matter of course, within twenty-one days after service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1)(B). In all other cases, a party may amend only with leave of court, and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). An amended complaint supercedes the original, which renders a pending motion to dismiss moot. See, e.g., Connecticut LLC v. Zuckerberg, 522 F.3d 82, 96 (1st Cir. 2008); Kolling v.

Am. Power Conversion Corp., 347 F.3d 11, 16 (1st Cir. 2003);
Millay v. Surry Sch. Dep't, 584 F. Supp. 2d 219, 227 (D. Me.
2008).

To avoid unnecessary filings and confusion in this case, the court will resolve the pending motions without waiting for the responses. Although Leeds did not amend his complaint within twenty-one days after the motion to dismiss was filed, in the interests of justice, the court will allow him to file the amended complaint. Once docketed, that complaint will replace the writ filed in state court. At that time, BAE Systems's motion to dismiss will be moot. Therefore, the pending motions are resolved as follows.

Conclusion

For the foregoing reasons, the plaintiff's motion to amend (document no. 10) is granted. The defendant's motion to dismiss (document no. 7) is denied as moot and without prejudice.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

June 2, 2010

cc: Janine Gawryl, Esquire
Daniel E. Will, Esquire